1952 K File No. Pharmacy II | 52 (R)

Legal Dept
B BRANCH

P.M.(E) 1952

Subject:— Rules under the Pharmacy Act 1948.

II | 52 (R)

51—B

Legal Department.

Revised draft Rules are sent herewith subject to the following observation:-

(1) Draft rule 2: (i) In view of the provisions of section 2(e) of the Pharmacy Act, 1948, it is not necessary to define the expression "Executive Committee".

(ii) It is necessary to define the expressions "Form" and "President". It is also necessary to provide that the words and expressions used in the Act and not defined in the Rules shall have the same meaning assigned to them in the Act.

(2) Draft rule 5 and Form A: (i) Draft rule has been split up in two as rules 5 and 6.

(ii) Under the rules proposed, the Returning Officer has to initiate the action regarding the election of a member by issueing a precept in form A. This form, in para 6 thereof, specifies the last day of receipt of nominations by the Returning Officer. Under draft rule 5(1) the Council has to fix the last nomination day. There is, therefore, likely to be a conflict in the specification of these dates. Reference to the last nomination day in Form A has, therefore been deleted.

(3) Draft rule 6(21): In view of the provisions of section 24 of the Act, this rule will be ultra vires. For small matters the Returning Officer should use his discretion.

(4) Draft rule 7: The draft rule has been revised on the lines of the provisions of rules 6 and 7 of the Bombay Legislative Assembly Rules and rule 11 of the Bombay Primary Education Rules, 1948. The L.S.G. & P.H.D. should see if it is suitable from the administrative point of view. That department should also consider whether nomination by ballot is necessary and whether nominations and ballot should be held on the same day.

(5) Draft rule 15(4): Reference to Secretary is not correct and has therefore been substituted by the "Registrar".

(6) Draft rule 16(1)(d):- The word "arguments" appears to be necessary after the word "contains".

(7) Draft rule 25: In view of the first proviso to rule 24(1) and rule 24(2), this rule is redundant and, therefore, not necessary.

(8) Draft rule 26: The words "and seconded" are not necessary as under the draft rule 21(1) every motion or amendment not seconded shall be deemed to have been withdrawn.

(9) Draft rule 31: has been amended so as to provide for the personal explanation in connection with some previous debate.

(10) Draft rule 34(7): Seems to be unnecessary.

(11) Draft rules 36, 37 and 38: have been recast on the lines of rules 3, 4 and 5 of the Bombay Medical Practitioners' Rules. Reference to "insolvency" in the draft rule 38 will have to be deleted as that has not been made a disqualification for becoming a member of Pharmacy Council under the Pharmacy Act.

(12) Draft rule 45: Under the Act the Council is not authorised to issue any Standing Orders. Reference to these has therefore been deleted.

(13) Draft rules 50 and 51: have been recast on the lines of rules 42 and 44 of the Bombay Medical Practitioners' Rules.

(14) Draft Rule 53: (i) Publication of the list of persons in practice is not presumably necessary.

(ii) List of officers is proposed to be approved by Government as well as by the Pharmacy Council of India. It is presumed that no provision is required to be made in case of a difference between these two authorities.

(15) Draft rule 55: It is necessary to add the words "at which the subject is to come up for discussion" at the end.

(16) Draft rule 56: Corresponding provision has been repealed in the Bombay Medical Practitioners' Rules.

(17) Draft rules 62 to 66; Part IX: Under clauses (c) and (d) of section 26 of the Pharmacy Act the State Council may, with the previous sanction of the State Government, fix the salaries and allowances and other conditions of service of the Secretary and other officers and servants of the Council and fix the rates of allowances payable to members of the Council. The State Government is, therefore, not competent to usurp the function of the State Council. These rules have accordingly been deleted. The State Council may pass the necessary resolution.

(18) Draft rules 67 and 68: Penal provisions of theAct are contained in sections 41, 42 and 43 thereof. Cognizance of an offence thereunder shall not be taken except upon complaint made -

(i) by order of the State Government or the Executive Committee, in case of an offence under sec. 41;

(ii) by order of the State Government only, in case of an offence under section 42; and

(iii) by order of the Executive Committee only, in case of an offence under section 43.

The Registrar can no doubt require the complainant to produce prima facie proof of the matter complained of if it relates to an offence under section 42. If, however, the offence relates to section 42, the State Government alone is authorised to sanction the prosecution. Such sanction will be asked from the Government only and the complaint may not at all be received by the Registrar. On receipt of such an application Government can ask for the report of the Registrar but it is doubtful if the provision can be made in the rules so as to authorise the Registrar to call for the proof on his own account. It is, therefore, safer to exclude section 42 from the operation of these rules. Under section 41, the order can be issued both by the State Government or the Executive Committee. For the

offences under this section also therefore such proof can be asked by the Registrar. Under these sections the Executive Committee is not expected to institute the proceedings as proposed but is only to make the order authorising the compleinant to institute the proceedings. Theser ules are accordingly amended in the light of these remarks.

(19) Draft rule 70: Register is not to be maintained in the alphabetical order as in the case of the medical practitioners' register.

(20) Draft rule 74: In view of section 34(1) of the Act, sub-rules (1), (2) and (4) except proviso are not necessary and sub-rule (3) is ultra vires. Under section 34(3) on payment of the renewal fee the Registrar shall in the prescribed manner endorse the certificate of registration accordingly. No provision, however, have been proposed regarding the manner in which such certificates are to be endorsed. Unless a notification under section 34 is issued, this rule has no legal force. Such notification should be issued.

(21) Draft rule 76: There is no provision made in the Act for any alteration (except section 39(5)) in the Register nor is there any provision of appeal against the rejection by the Registrar to register additional qualifications under section 35. The draft rule is amended so as to meet with this objection.

(22) Draft rule 77 and Form J: There is no provision in the Act for certified copies of entries in the Register. There is, however, a provision for the printed copies of the Register. The rule has been amended accordingly. Form J prescribing the form of certified copy of entries in the Register is ultra vires.

(23) Draft rule 79 and Form K: The rule and the Form K are ultra vires of sections 34(2) and 36.

(24) Draft rule 80: merely repeats the provisions of section 40 and is not, therefore, necessary. Last sentence regarding alteration or erasure is ultra vires.

(25) Draft rule 81: will be covered by section 46(1) and is, therefore, intra vires.

(26) Draft rule 82: will becovered by sections 29(e) and 46(2)(k) and is, therefore, intra-vires.

(27) Draft rule 83: Levy of fee for registration of change of name is ultra vires. L.S.G. and P.H.D. may consider what should be the fee for printed copies of the Register. No reference to the stamp duty is necessary as that will have to be paid, if payable, under the Indian Stamp Act 1899, without any reference to the same in the rules.

(28) Draft rule 85: is ultra vires of section 36 of the Act.

(29) Draft rule 86: has been amended on the lines of section 36.

(30) Draft rule 87: The words beginning with "by a person" and ending with "professional respect" have been deleted with a view to bring the cases specified in clauses (i) and (ii) of section 36(1) within the purview of this rule.

(31) Draft rule 89: (i) For the word "Solicitor" wherever it occurs, the words "Legal adviser" have been substituted on the lines of the corresponding provisions of the Bombay Medical Practitioners' Rules.

(ii) In the case of a person whose name has been entered in the Register by error, no lengthy procedure prescribed in the succeeding rules would be necessary. The draft rule is silent on this point. A provision is therefore made to authorise the Executive Committee to direct the Registrar to remove such name entered by error immediately.

(32) Draft rule 93: Draft rule is based on rule 81 of the Bombay Medical Rules and rule 89 of the Bombay Medical Practitioners' Rules. The word "Counsel" in the draft rule is obviously a typing mistake for the word "Council"

appearing in the aforesaid rules. The words "the Executive Committee" have therefore been substituted for the words "of the Counsel" in the draft rule.

(33) Draft rule 97: (1) does not take into account the provisions of clauses (i) and (iii) of section 36(1) of the Act. It has therefore been amended so as to include the cases specified in these clauses also.

(ii) For the removal of the name of a pharmacist from the Register under section 36(1)(ii), the offence committed by the pharmacist need not be congnizable. It may be any offence, which in the opinion of the Ex-Committee, renders him unfit to be kept on the Register.

(34) Draft rules 98 and 99: have been recast on the lines of rules 94 and 95 of the Bombay Medical Practitioners' Rules.

(35) Draft rule 100: There is no provision made in the Pharmacy Act for the issue of a direction or removal of a name of a pharmacist as contemplated by this rule. It is ultra vires and has, therefore, been deleted.

(36) Draft rule 101: is not necessary since it merely repeats the provisions of section 36(3).

(37) Draft rule 102: Paragraph (1) is not necessary since it merely repeats theprovisions of section 36(5).

(38) As regards the L.S.G. & P.H.D. remarks against rule 104 it is pointed out that the draft rule 104, as drafted by the Pharmacy Council of India, has not been omitted in the draft rules. Paragraph 1 of the draft rule 107 corresponds to rule 104 of the Pharmacy Council of India's draft. This provision in rule 107, however, cannot be repeated under rule 104 as the Ex-Council has been empowered to consider the application.

(39) Draft rules 106 and 107: have been combined as suggested by the L.S.G. & P.H.D.

(40) Draft rule 108: Scales of pay and allowances of the Registrar are to be fixed by the Council with the

previous sanction of the State Government (vide Sec and (e) of the Act). Provisions proposed in that behalf should therefore, be made separately in the manner required by section 26. Under section 46(2)(f) the qualifications for the post of a Registrar are to be prescribed by Government by rules. The power cannot be validly delegated to the Council as is proposed in the draft rule. The L.S.G. & P.H.D. may therefore consider what these qualifications should be for inclusion in the draft rules.

(41) Draft rules 110 and 113: Provisions regarding Regulations of the Council have been deleted as they would be ultra vires, the State Council having no power to issue such Regulations under the Act.

(42) Draft rules 120 to 122: will be covered by section 46(1) and would, therefore, be intra vires. The word "Common" has been substituted for the word "Corporate" to be consistent with the wording of section 22 of the Act.

(43) Draft rules 123 to 128: have been incorporated in one rule only. They will be covered by section 46(2)(a) and are, therefore, intra vires.

(44) Part XVIII: For the word "Registrar", wherever, it occurs, word "treasurer" is substituted as these duties and powers properly pertain to the treasurer. It is true that under section 26(a) the State Council may, with the previous sanction of the State Government, appoint a Registrar who shall also act as Secretary and, if so decided by the Council Treasurer of the Council. If the Council does not decide to appoint the Registrar as a treasurer then it can appoint another person as a treasurer under section 26(b). In that case the difficulty as to who should exercise the powers and do the duties mentioned in this Part would arise. To avoid this, the proposed amendment is necessary.

(45) Draft for C: (i) Information regarding address and Registration No. of the candidate in the voting paper does not appear to be necessary. The form has been recast on the lines of the corresponding form in the Medical Rules

(ii) Instruction No.9 is redundant as the contents thereof are already contained in other instructions.

(46) Draft formG: (i) as amended is in order.

(ii) Instruction 7 is incomplete.

(iii) Instruction 8 and 9 are ultra vires.

(iv) Dates referred to in column 6 of the accompanying form are presumably the dates of obtaining the degree or diploma of the applicant.

(47) Draft form L: In view of the provisions of draft rule 91 the last para added in pencil is necessary.

(48) The provision in respect of the following matters which is required to be prescribed by rules under the Act does not appear to have been made in the proposed draft rules, namely:-

(a) Degrees or deplomas to be prescribed under section 19(b);

(b) Audit of accounts (Sec. 46(2)(a));

(c) The amount and nature of the security to be given by the treasurer (sec.46(2)(f); and

(d) Charge for supplying copies of the register.

The L.S.G. & P.H.D. may consider whether any provision in respect of these matters is to be included in the draft rules.

Id/ J.R.DHURANDHAR.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.489, dated the 14th January 1952

RHB.
5.7.

Legal Department.

Draft rule 5 and form A:- If there is no likelihood of any conflict arising between the date specified by the Council under the draft rule 6(1)(a) and the date specified by the Returning Officer in para 6 of Form A in respect of the last day for nomination, as stated by the Tribunal, there would be no objection to retaining para 6 of the draft form A. A revised draft form A containing the said paragraph isaccordingly sent herewith. It is advisable to state in the notice that nomination papers shall be accepted during office hours only.

2. Draft rule 7(11):- There is no objection to delete the last word 'Bombay' in the draft rule 7(11), as suggested by the Tribunal. The necessary amendment has been carried out in the draft rule at p.85 ante.

3. Draft rule 8(2):- Necessary amendment has been carried out as suggested by the Tribunal.

4. Draft rule 53 :- Necessary amendment has been made in the revised draft rule 55.

5. Sub-rules (1), (2) and (4) of the draft Rule 74 may be retained for the reasons given by the Tribunal.

Sub-rule (3) of rule 74 is ultra vires for the reason that whereas sub-section (1) of section 34 of the Act permits a registered pharmacist to pay th renewal fees before the first day of April of the year to which it relates, sub-rule (3) enjoins upon him to pay the renewal fees on the 1st day of January. If the intention is that registered pharmacist may be informed about his liability this sub-rule may be recast as follows:-

"(3) The Registrar may by a letter sent by regist red post at the address given in the Registrar draw the attention of a registered pharmacist to the provision of sub-rule (2) and intimate to him that if the renewal fees are not paid on or before the 1st April his name will be removed from the Register."

L.D. is not in a position to suggest any method by which the Registrar can endorse certificates without calling them back. Attention is, however, invited to section 36(5) under which a registered pharmacist has to return his certificate to the Registrar. The provisions in section 34(2) will not be binding upon the Registrar unless the method of endorsement is prescribed. The matter may be left at this and the Central Govt. may in the meantime be moved to delete sub-section (3) of section 34 if the endorsement of a certificate is found impracticable.

6. Draft rule 77Y and Form J:- For the reasons stated by the Tribunal, Rule 77 and Form J may be retained.

7. Draft rule 79 and Form K:- Whatever may be the position under the rule under the Bombay Medical Practitioners' Act, 1938, rule 79 and Form K cannot legally be made under this Act. Once the name is registered it cannot be removed except for the reasons provided in the Act. If a registered pharmacist desires that his name be removed he can do so by not paying renewal fees. There is no need to make a rule and obtain a declaration in the form suggested in the rule.

8. Draft rule 80:- The legal position isas stated in para.(24) of the L.D.U.R. No.489, dated the 14th January 1952.

9. Draft rule 83(i):- Levy of fee for registration of change of name is ultra vires as stated in the above mentioned L.D.U.R.

(ii) None of the items specified in this rule is covered by the provisions of Chapter II of the Indian Stamp Act, 1899. No Stamp Duty would therefore, be leviable for these instruments.

(iii) The presumption made by the Tribunal that the fee for a certificate of registrtion has been dropped from this rule due to typing error in this Department is

not correct. The reference to the payment of fees for a certificate of Registration was deleted as under revised rule 72 a provision is made for payment of fees along with an appliction for registration. A person is entitled as of right to a certificate of Registration without any extra payment.

10. Draft rule 85:- The Government of India may be approached for the amendment of the Act if necessary.

11. Draft rule 108:- The revised draft rule 99 has been further revised so as to embody the Tribunal's proposal.

12. The new rules 39A and 118A as slightly revised have been inserted in the draft rules as suggested by the Tribunal. The draft rules suggested in para (48)(e) has been included in the draft rule 116.

Sd/-

Additional Deputy Secretary to Government.

U.R. to L.S.G. & P.H.D. No.17709-B, dated the 25th October 1952.

RHB.
5.7.